IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 3750 of 2005

Date of decision : December 11, 2007

Northern Indian Glass Industries Ltd,

..... Petitioner

through Mr.Puneet Bali, Advocate

v.

State of Haryana & others,

..... Respondents

through Mr.Hawa Singh Hooda, A.G.Haryana with Mr.Ashish Kapoor, Addl.A.G.Haryana

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

Prayer in this writ petition, filed under Articles 226/227 of the Constitution of India, is for the issuance of a writ in the nature of certiorari for quashing the impugned notice of resumption, dated 6.1.2005, issued by respondent No.1.

A brief narrative of the facts of the case would be appropriate.

The respondent-State acquired 358 kanals of land, situated in

village Sankhol, Tehsil Bahadurgarh, District Rohtak, for the petitioner-company. The Collector assessed compensation and pronounced an Award on 20.6.1974. After payment of the amount assessed, possession was handed over to the petitioner and a deed of conveyance, dated 16.10.1974 was executed by the State in favour of the petitioner. The land owners filed reference petitions, under Section 18 of the Land Acquisition Act (for short herein after referred to as "the Act"). The Additional District Judge, Rohtak enhanced compensation, vide award, dated 29.1.1979. Being dis-satisfied with the amount awarded, by the reference Court, the landowners assailed the award before the High Court. The High Court enhanced the market value to Rs.8.10 lacs. In the meanwhile, execution proceedings were initiated by the land owners to recover the amount awarded. As the petitioner failed to pay the awarded amount, the acquired land was attached by the executing Court,vide its order, dated 29.8.1987. Vide order, dated 25.2.1989, the property was ordered to be sold. The petitioner moved an application, under Order 21 Rule 83 of the CPC, requesting that the sale be postponed to enable him to raise the decretal amount by private sale of the acquired land. Vide order, dated 7.5.1991, the Additional District Judge, Rohtak granted permission to the petitioner to sell the property. The petitioner sold a part of the property and discharged his liability.

Thereafter certain land owners, filed a writ petition before this Court, impugning the acquisition proceedings. Vide judgment, dated 5.3.1992, passed in CWP No.14735 of 1991, this Court quashed the proceedings for acquisition and directed the petitioner herein to restore the land to the original land owners.

Aggrieved by the aforementioned judgment, the petitioner filed

SLP (C) No.9104 of 1992 before the Hon'ble Supreme Court, which was subsequently registered as Civil Appeal No.7023 of 1993. Eventually, vide judgment, dated 29.10.2002, the High Court's judgment was set aside. However, while allowing the appeal, the Hon'ble Supreme Court observed that it would be open to the State Government to take action against the petitioner for restitution of the land.

The petitioner thereafter carved out 134 plots and sold them in the open market. The State of Haryana served a notice, dated 6.1.2005, resuming the entire land, transferred to the petitioner, and directed the petitioner to restore its possession.

Counsel for the petitioner contends that a major part of the land was sold, pursuant to permission, granted by the executing Court, namely, the Court of District & Sessions Judge, Rohtak. The State of Haryana was a party to these proceedings and did not raise any objection with respect to the sale. Consequently, the impugned order/notice of resumption could not have been passed, without taking into consideration the aforementioned facts. It is further argued that as the State of Haryana was a party to the execution proceedings, it could not have invoked the provisions of the conveyance deed, which required the petitioner to seek prior permission for sale of the land, and as a necessary corollary, the State would be deemed to have granted permission for sale of the land .

It is also argued that the impugned order/notice is void and non-est, being violative of the principles of natural justice. The notice is an order of resumption, directing the petitioner to restore possession to the State and, therefore, could only have been passed, after the service of a show cause notice and the grant of a reasonable opportunity of hearing.

Instead of granting an opportunity of hearing, the property has been resumed unilaterally in blatant violation of the principles of natural justice. It is further submitted that as the land was acquired for the petitioner and conveyance deed was executed, pursuant to Section 41 of Chapter VII of the Land Acquisition Act, the respondents were required to obey the principles of natural justice.

Shri Hawa Singh Hooda, Senior Advocate & Advocate General, Haryana, on the other hand, submits that the State of Haryana acquired this land so that the petitioner could set up an industrial unit. However, till date, the petitioner has not set up an industrial unit much less any industry. Instead the petitioner has carved out a colony, laid out roads and sub divided the land into plots, which have been sold to a large number of un-suspecting individuals. The petitioner has sold the property in gross and blatant violation of the terms and conditions of the conveyance deed, which required the petitioner to use the land for the purpose of setting up of an industry. It is further argued that if at all, the petitioner sought to transfer the land, he was required to obtain prior permission of the State. As no such permission was sought before dividing the land into plots, the petitioner violated the terms and conditions of the conveyance deed. The State, after examining the matter in detail, passed the impugned order/notice, in exercise of powers, conferred upon it, under the conveyance deed. It is submitted that this fraud, played upon the State, the land owners, as also the un-suspecting transferees from the petitioner, should not be condoned.

As regards the plea of violation of the principles of natural justice, it is submitted that the respondents have exercised their contractual rights, under clause 2(1)(i)-(iv) and clause 4(1) of the conveyance deed,

and as a result, no opportunity of hearing was required to be afforded to the petitioner. It is further submitted that the petitioner cannot take the benefit of the permission to sell, granted by the executing Court. The said order cannot over-ride the terms and conditions of the conveyance deed, which required the petitioner to take prior permission before selling any land. The order, passed by the executing Court, was to meet the exigencies of payment and has no relevance to the present controversy. The petitioner, in abject violation of the conditions of the conveyance deed, carved out the property into 134 plots and sold the same to unsuspecting buyers. The petitioner's fraudulent acts, bordering on criminality, dis-entitle him to any relief.

It is further argued that prior to the issuance of the impugned notice, a committee was constituted to verify the factual position. The committee did not find any plant, machinery or electricity connection. No over-head water tank was existing. The committee, however, found a recently established office. The office was being run by a property dealer. It was also discovered that a road net work had been laid and the land had been bifurcated into plots, measuring 500 and 1000 sq. yards. It is submitted that this gross violation of the terms and conditions of the conveyance deed, and this monumental fraud, played upon the State and the unsuspecting buyers, dis-entitles the petitioner to any relief from this Court. It is submitted that principles of natural justice have no applicability to the present case, in view of the petitioner's conduct and the fact that he has duped the State, as also unsuspecting buyers. The State has merely exercised its rights, under the conveyance deed and resumed the land in accordance with clause 4(1) thereof. It is prayed that the present petition be dismissed.

We have heard learned counsel for the parties and perused the paper book, as also the impugned notice.

The petitioner was allotted land by the State of Haryana to set up a factory. Admittedly, no factory was set up. The land owners eventually filed writ petitions in the High Court, which led to the quashing of the proceedings for acquisition. The High Court's judgment was, however, set aside by the Hon'ble Supreme Court, vide judgment, dated 29.10.2002, passed in Civil Appeal No.7023 of 1993. A relevant extract of the aforementioned judgment reads as follows :-

> "..... If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant company."

Taking a cue from the observations of the Hon'ble Supreme Court, the State of Haryana passed an order, directing resumption of the property in dispute. A perusal of the impugned order/notice discloses that the State of Haryana constituted a committee to inspect the site. The committee did not find any industrial activity or industry in existence. No plant, machinery or electrical connection existed. The land appeared to have been divided into plots measuring 500 and 1000 sq. yards. A road net work had been laid and as per the report of the Committee, an unauthorised colony had been established. After a perusal of the report, the

Commissioner and Secretary to Government of Haryana, Industries Department, passed an order to the effect that as the company had violated clause 2(1)(i)-(iv) of the conveyance deed, the State Government had decided in view of its contractual rights under clause 4(1) of the conveyance deed, to resume the land to the State Government. It was ordered that in view of the resumption, the land would vest in the government from the date of service of the notice, in accordance with the provisions of the conveyance deed. The company was directed to remove the building and other structures, constructed on the said land or machinery and other fittings fixed thereon or lying thereon within a period of 15 months.

During the pendency of the present proceedings, and vide order, dated 3.5.2007, the petitioner was granted liberty to place on record additional documents, namely, sale deeds, sale certificates etc. By way of C.M.No.17168 of 2007, the petitioner has filed an affidavit of Rajeev Khurana son of Krishan Lal Khurana, appending therewith a list disclosing the details of sale deeds, executed by the petitioner-company. A perusal of this list shows that from 27.5.2004 to 12.1.2005, the petitioner-company executed 118 sale deeds in favour of various individuals. However, it is not denied by counsel for the petitioner that prior to the execution of sale deeds, he did not approach the State Government for grant of any permission, in terms of clause 2(iv) of the conveyance deed. Though counsel for the petitioner contends that the land was sold, pursuant to permission granted by the Additional District Judge, Rohtak, vide his order, dated 7.5.1991, we are doubtful as to the correctness of the above assertion, as the permission to sell was granted in 1991, whereas the sales were made in the years 2004

and 2005.

However, the question that would merit adjudication is whether in view of the rights, conferred upon the State, under the conveyance deed, the State could have proceeded to resume the property, without issuance of a show cause notice, and/or providing an opportunity of hearing to the petitioner.

It is not denied that the conveyance deed places an obligation upon the petitioner to obtain prior permission of the government, if he desires to sell, mortgage etc. the transferred property. The conveyance deed entitles the State to order resumption, in case the petitioner violates the terms and conditions of the conveyance deed. The petitioner, admittedly, did not take any such permission, much less apply for such a permission. Thus, the petitioner clearly violated clause 2(iv) of the conveyance deed, setting into motion the provisions of clause 4(i) of the conveyance deed, which provide that if the company shall fail to observe and perform any of the covenants on its part, the government may resume the land, by serving a notice on the company at its registered office. The government, after an inquiry, proceeded to invoke its rights, under clause 4(i) of the conveyance deed and ordered resumption of the property and directed the petitioner to remove the buildings and other structures within a period of 15 months.

Admittedly, no show cause notice was served upon the petitioner and/or opportunity of hearing afforded to the petitioner, before respondent No.1 proceeded to pass the order of resumption. Counsel for the State of Haryana has vehemently argued that resumption has been ordered in accordance with clause 4 (i) of the conveyance deed, which does not require the respondents to serve a prior show cause notice upon the

petitioner. The respondents have invoked the provisions of the conveyance deed and passed orders of resumption in accordance with their contractual rights. .

In order to resolve this controversy, it would be necessary to peruse the relevant clauses of the conveyance deed, as also the statutory provisions of the Land Acquisition Act, that govern acquisitions by the State for and on behalf of private companies. Clause 2(i), (iv), and clause 4 (i) and (ii) of the conveyance deed read as follows :-

> "2. THE COMPANY HEREBY COVENANTS with the Government that it shall :-
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> (i) use the said land exclusively for all or any of the purposes of a factory for the manufacture of Street Glass and such other products as the Government may approve and for no other purpose.
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> Xx xx xx
>
> (iv) not transfer by way of sale, gift, exchange, mortgage or otherwise the said land or the buildings constructed thereon or any right, title or interest therein without prior written permission of the Government. However, the Government hereby agrees that the Company shall have the liberty to mortgage the said land together with building erected/to be erected thereon in favour of the Industrial Finance Corporation of Indian (hereinafter referred to as I.F.C.I); Industrial Development Bank of India (hereinafter referred to as I.D.B.I) and the Industrial Credit and Investment

Corporation of India (herein after referred to as I.C.I.C.I).

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4. (i) In the event of the company being wound up whether compulsorily or voluntarily (save for the purpose of amalgamation or reconstruction) and the company, through its Liquidator, failing to obtain the Government's permission to transfer the said land with the buildings constructed thereon in terms of clause 2(iv) thereof or if the company shall fail to observe and perform any of the covenants on its part contained in this deed, then and in either such case the Government may resume the said land by serving a notice on the company by sending it to the registered office of the company by registered post (acknowledgement due). The notice shall indicate the reasons for resumption of the said land and shall require the company to remove and dispose of for its own benefit all buildings and other structures constructed on the said land and all machinery and other fittings fixed therein or lying thereon within a period of not more than 15 months from the date of service of the notice on the company.

(ii) That from the date of service of the notice referred to in sub-clause (i) the said land shall subject to the provisions of sub-clause (iv) herein after appearing stand resumed and vest in the Government.

Sub-clause (i) of clause 2 of the conveyance deed places an

obligation upon the petitioner to use the land exclusively for setting up a factory for the manufacture of sheet glass and such other products as the government may approve and for no other purpose. Sub clause (iv) of clause 2, of the conveyance deed, binds the petitioner not to transfer, by way of sale, gift, exchange, mortgage or otherwise, land or buildings, constructed thereon or any right, title or interest therein, without the prior written permission of the government. Clause 4 of the conveyance deed, apart from enumerating the rights of the parties in the eventuality of liquidation of the company, contains a stipulation that if the company shall fail to observe and perform any of the covenants on its part contained in the deed, then and in either such case the government may resume the land by serving a notice upon the company at its registered office. The notice shall indicate the reasons for resumption and the company shall be required to remove and dispose of its buildings and other structures, machinery etc. within a period of not more than 15 months from the date of service of the notice. Sub clause (ii) of clause 4, of the conveyance deed, stipulates that from the date of service of the notice, referred to in sub-clause (i), the land shall, subject to the provisions of sub-clause (iv) of clause 4, stand resumed and vest in the government.

Part VII of the Land Acquisition Act sets out the procedure for acquisition of land for companies. Section 41 of the Act envisages the execution of an agreement between the Government and the company on such terms and conditions as are enumerated therein. Section 44A of the Act postulates that no company for which any land is acquired shall transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise, except with the previous sanction of the government. Section 44A of the act

reads as follows :-

> "44A. **Restriction on transfer, etc.-** No company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

It is, thus, apparent that before proceeding to alienate the acquired land, a company is required to obtain the previous sanction of the State Government, in this case the State of Haryana. As a necessary corollary, any alienation effected by a company, without the previous sanction of the state government, would be violative of the provisions of Section 44-A of the Act. Clause 2(iv) of the conveyance deed , in essence incorporates the provisions of Section 44A of the Act. The Act, however, does not prescribe the consequences of violation of the provisions of Section 44-A. The consequences of violation of Section 44-A are however prescribed in the conveyance deed. However, as the conveyance deed was executed under Section 41 of the Act and the land was acquired pursuant to the statutory provisions of Part VII of the Act, any act by the State Government based upon its contractual rights emanating from the conveyance deed, executed under Part VII of the Act, would be exercised not just in furtherance of its contractual rights but also in exercise of its statutory powers emanating from Chapter VII of the Act. Though clause 4 (ii) of the conveyance deed is silent about a prior notice, as the violation complained of is in essence a violation of Section 44-A of the Act, we are of the considered opinion that the order of resumption should have been preceded by a show cause notice, and/or a hearing in consonance with the

principles of natural justice.

Principles of natural justice are an inalienable part of the rule of law. An administrative act that has the propensity to visit a person with civil/evil consequences must be preceded by a show cause notice calling the delinquent to show cause against the proposed action. A show cause notice and/or opportunity of hearing enables the officer/authority to take cognizance of any explanation,that may be put-forth by the offending party. The principles of natural justice apply irrespective of the nature of the cause, or the gravity thereof and are not mere platitudes to the rule of law. An exception to the aforementioned principle arises where service of a prior notice would make no difference to the ultimate result.

Another significant fact, which has persuaded us to hold, as above, is that the petitioner has sold the land by executing more than 118 sale deeds from 2004 to 2005. The rights of the vendees, though co-extensive with those of the petitioner, the ultimate sufferers in our considered opinion, would be these innocent vendees. Their right to a hearing, though minimal, cannot be ignored. Thus, we are constrained to hold that the impugned order of resumption was passed, in violation of the principles of natural justice and must therefore be and is set aside.

The respondents shall forthwith issue a show cause notice to the petitioner, as also to the vendees, referred to in Annexure A1. The respondents may, in view of their large number, serve the vendees by a public notice. The respondents are directed to decide the matter, within a period of three months from the service of a show cause notice, upon the petitioner and the vendees. The writ petition is allowed, in the aforementioned terms, with no order as to costs. Any expression of opinion

as to the merits of the controversy shall be disregarded by the authorities, while deciding the matter afresh.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

December 11, 2007
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